

THE VIRGINIA PETROLEUM STORAGE TANK FUND REIMBURSEMENT GUIDANCE MANUAL

Volume VI

Reconsideration Procedures

*Applicable to initial Reimbursement Decisions issued **after August 27, 2002***

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1.0 VIRGINIA PETROLEUM STORAGE TANK FUND REIMBURSEMENT RECONSIDERATION PROCEDURE

The documents in this procedure package are updated periodically. Claimants and consultants should use the procedure package in effect at the time of their initial claim decision and should not rely on versions of the procedure package, which they may have received previously. The latest version of these procedures may be obtained by calling (804) 698-4358 or on the Internet at www.deq.virginia.gov/tanks/reimbrs.html.

1.1 OVERVIEW

Claimants for reimbursement from the Virginia Petroleum Storage Tank Fund (Fund) have one opportunity (the reconsideration process) to contest the initial reimbursement decision for their claim. A reconsideration panel (Panel), composed of DEQ personnel who have not previously rendered a reimbursement decision on the claim but who are familiar with reimbursement policies, decides the merits of each reconsideration claim. The Panel is charged with ensuring that State law and regulations and DEQ policies and procedures have been properly and fairly applied during the reconsideration claim review, and is responsible for rendering the agency's final, written decision on the claim.

Some types of errors may not be corrected through the reconsideration process. It is the responsibility of the claimant and/or consultant to ensure that all application form (AAFs, Bid Work Progress and Verification Forms, and application Worksheets) are completely and accurately filled out. Failure to exercise proper care in preparing an application may result in a denial of costs, which may not be corrected through the Reconsideration process. Following is a list of errors that may not be corrected:

1. Items or units omitted from the Work Performed Column of the AAF or the Bid Work Progress and Verification Form will not be eligible for reimbursement even if these items are included on the worksheet(s) of the application.
2. Items or units omitted from the worksheet(s) of the application will not be eligible for reimbursement.
3. Failure to limit the use of an AAF to only one phase or reimbursement period.
4. No additions or revisions to the AAFs and/or the Bid Work Progress and Verification Forms will be accepted from the claimant after the regional office forwards the verification package to Central Office of DEQ.
5. Failure to claim performed work on the application Worksheets.
6. Typographical errors on the AAF in the "Proposed," "Contingent," or "Work Performed" columns.
7. Typographical errors on the Worksheets of the reimbursement application.

8. Failure to claim Task or Material item as authorized on the AAF (authorized Tasks must be claimed as Tasks; authorized Materials must be claimed as Material items).
9. Failure to claim all costs in a phase or reimbursement period (These costs are not eligible for reimbursement in subsequent claims).
10. Using one invoice in multiple claims. Invoices submitted in an application cannot be used as documentation for reimbursement of costs in subsequent claims.
11. Using task or material codes on an AAF or application Worksheet that are not listed on the UCR Schedule which is in effect for the application.

1.2 ASSISTANCE

If you wish to request Reconsideration of the initial reimbursement decision, the *VPSTF Reimbursement Guidance Manual* contains additional information that may assist in its preparation. If you have UCR denials, you may wish to consult the UCR Schedule(s). A copy can be obtained by (1) calling DEQ's customer service line at **(804) 698-4358**, or (2) visiting VPSTF's Web Page at www.deq.virginia.gov/tanks/reimbrs.html and using the following instructions:



1. Select "Download Library"
2. Select "The Virginia Petroleum Storage Tank Fund Reimbursement Guidance Manual; Volume II; UCR Schedules"



1.3 DEADLINES

All claimants who desire reconsideration are required to submit both of the following documents, which must be received by DEQ on or before the deadlines stated in the table below:

Form	Filing Deadline
Notice of Intent to Seek Reconsideration (also referred to as NOI)	21 calendar days after the date the claimant receives the initial Reimbursement Decision package. Calculated based on the signed and dated Certified Mail Receipt.
Reconsideration Claim Form (with supporting documentation)	45 calendar days after the date the claimant receives the initial Reimbursement Decision package. Calculated based on the signed and dated Certified Mail Receipt.



If the claimant fails to meet either of these filing deadlines, the initial Reimbursement Decision will be FINAL, and the claimant will not be permitted any further administrative review.



1.4 STEP BY STEP CLAIM PROCEDURES

Claimants may contest DEQ's initial Reimbursement decision by following the steps below. Questions about the process can be directed to the DEQ's customer service line at **(804) 698-4358**.

- Step 1. The claimant receives the initial Reimbursement Decision package containing a **Reconsideration Claim Form** and **Notice of Intent to Seek Reconsideration (NOI)** and decides to contest all or part of any costs denied. Note: Sample forms are included in Appendix 1. To file for Reconsideration, use the forms included with the reimbursement decision package.
- Step 2. Within 21 days of the date of the certified mail receipt for the original claim, the claimant files the completed **Notice of Intent to Seek Reconsideration** form. If the claimant does not file an NOI within the above deadline, the initial reimbursement decision becomes a final agency decision.
- Step 3. DEQ mails a copy of the file, if requested on the NOI form by the claimant.
- Step 4. Within 45 days of the date of the certified mail receipt for the initial reimbursement decision, the claimant files the **Reconsideration Claim Form** and **Reconsideration Claim Form Worksheet** (see Appendix 1) with supporting documents. If the claimant does not file the claim form and worksheet within the above deadline, the initial reimbursement decision becomes a final agency decision.

Note:

Additional
information

may be added

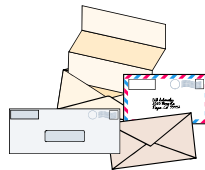
to the reconsideration claim until the Claim Form filing deadline. After this deadline, the reconsideration claim is closed (unless an additional time period is allowed after the Technical Reviewer conference - see below).

- Step 5. DEQ contacts the claimant to schedule a Technical Reviewer conference, if requested on the NOI Form.

A Technical Reviewer Conference allows the claimant to meet (or teleconference) with a claim reviewer prior to the Panel Meeting to discuss the specific facts related to the claim decision. Conference discussion is limited

to items claimed on the Reconsideration Claim Form. The claim reviewer will explain the denials in the initial decision and assist the claimant in identifying documentation deficiencies. The claimant should be prepared to discuss each issue they want the Panel to consider and identify which pieces of supporting documentation address those issues. DEQ usually allots one hour for these conferences.

- Step 6. The Technical Reviewer Conference is held at the scheduled time.
- Step 7. The technical reviewer prepares a written summary of the issues discussed during the conference and provides the claimant a copy. Under some circumstances, where documentation deficiencies are identified, DEQ may allow additional time beyond the Reconsideration Claim Form filing deadline for submission of documentation.
- Step 8. Before the deadline, if applicable, the claimant submits additional documentation allowed by the technical reviewer to be included in the reconsideration claim package.
- Step 9. After the Reconsideration Claim Form deadline or the deadline established during the Technical Reviewer Conference, DEQ reviews the claim. The presumption is that all documentation and evidence pertinent to the claim is now part of the claim file.
- Step 10. The technical reviewer reviews the Reconsideration Claim Form and supporting documentation and generates a draft final reconsideration claim decision.

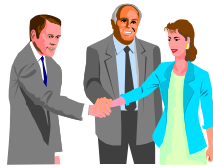


For Written Reconsiderations:

*In the written
type of
reconsideration,
the claimant*

elects not to make a personal appearance before the Panel, relying solely on the written claim materials to state the claimant's position.

- Step 11W. If the claimant selected a written determination on the NOI or converted to a Written Determination, a draft final reconsideration claim decision is presented to the Panel. The Panel reviews this draft based on the documentation in the file and the presentation of information by the claim reviewer.
- Step 12W. The final agency decision package is generated based on the panel proceedings and is mailed to the claimant's address specified on the reconsideration claim.



Reconsiderations Meeting:



For a reconsideration meeting, the claimant and/or representative(s) appear personally before the panel. A claimant's representative can be anyone with a detailed knowledge of the remediation activities and/or the claim, such as an attorney, accountant, or environmental consultant. Attending this meeting provides claimants the opportunity to personally present their perspective on the claim and arguments supporting their interpretation of the contents of the claim file. The meeting will be tape-recorded in order to have an accurate record of the proceedings.

Step 11M. Opportunity to Convert from a Meeting to a Written Reconsideration

Claimants who select a reconsideration meeting on the NOI may convert to a written reconsideration prior to scheduling the panel meeting. The results of the draft final reconsideration claim decision are communicated to the claimant in a "conversion letter" identifying any additional amount(s) that can be approved. If the approval amount is acceptable, the claimant signs and returns the Conversion Request Form to DEQ within 21 calendar days of the date of the conversion letter. From this point forward, the claim is handled as written reconsideration.

Step 12M. If the claimant elects not to convert, he or she must call DEQ to schedule the reconsideration meeting within 21 calendar days of the date of the conversion letter. If the claimant fails to meet this deadline, DEQ will select the meeting date without the claimant's input and will send written confirmation of this date to the claimant. Meeting dates will not be rescheduled except for bona fide emergencies as determined in the sole discretion of DEQ

Step 13M. The claimant (and/or (a) representative(s)) attends the reconsideration meeting and presents arguments to the DEQ panel. **The panel is under no obligation to consider any documentation other than that, which was submitted in the reconsideration claim package prior to its submission deadline.** Additional documentation will be considered only if the panel specifically requests such information. Panel Meetings are generally allotted one hour.

Step 14M. If the claimant and/or the claimant's representatives fail to attend the scheduled reconsideration meeting, the DEQ panel will proceed as though the claimant requested a written determination and will render a final agency decision.

Step 15M. The final agency decision package is generated based on the meeting proceedings and is mailed to the claimant's address specified on the reconsideration claim.

1.5 OTHER HELPFUL INFORMATION

When compiling information for the Reconsideration Claim Form Worksheet, the claimant should consider the possibility that several independent review criteria might affect the final determination of a particular cost's reimbursement eligibility. Additionally, the information reviewed during the reconsideration process may show that costs that DEQ previously approved should have been denied. Therefore, the claimant should anticipate and address any new issues the review might raise as well as addressing those issues specifically identified in the Reimbursement Decision Summary.

For example, assume that some costs were denied in the initial decision due to lack of documentation. It is possible that once the appropriate documentation is received the reconsideration claim review may determine that the costs exceed the UCRs. Such a determination would result in some portion of the claimed costs continuing to be denied. To avoid such secondary denials, the claimant should anticipate them and supply evidence to address them.

1.5.1 UCR Denials

Regarding costs denied for exceeding UCRs, please note that the administration of the Fund is not intended to interfere with or govern the actions of businesses engaged in petroleum storage tank release corrective action activities. Corrective action is site specific in nature, and the degree of effort involved cannot be determined accurately prior to the beginning of work in some cases. DEQ has the authority to reimburse for certain costs (e.g., mileage, equipment, hourly fees) at rates which may differ from the fees some companies charge as part of the cost of doing business. Thus, it is possible that certain costs or a percentage of certain costs, incurred by the responsible person during corrective action may not be eligible for reimbursement.

1.5.2 Reconsideration Claim Preparation Costs

Reconsideration claim preparation costs are not eligible for reimbursement unless the claim is for costs incurred for a phase of work, which began prior to March 1, 1995. In that case, up to \$1,000 may be approved for reconsideration claim preparation if the costs are claimed as an item on the reconsideration claim Form and the invoice, which billed the claim preparation cost, is included. However, if the Panel determines none of the claimed costs are eligible for reimbursement, the claim preparation costs cannot be approved for reimbursement.

October 1, 2005

APPENDIX 1
Reconsideration Claim Forms

**VIRGINIA PETROLEUM STORAGE TANK FUND
RECONSIDERATION CLAIM FORM**

If you have questions about how to complete this form or the Reconsideration Procedures, or if you have any questions in general, please call the Virginia Petroleum Storage Tank Fund Customer Service Line at (804) 698-4358. After completing this form, please mail it to: DEQ, OSRR, 10th Floor, 629 E. Main Street, Richmond, VA 23219 or fax it to (804) 698-4338 or (804) 69804266. **THIS FORM AND WORKSHEET(S) MUST BE RECEIVED BY DEQ WITHIN 45 DAYS OF THE DATE OF THE CERTIFIED MAIL RECEIPT FOR THE INITIAL REIMBURSEMENT DECISION PACKAGE.**

SECTION A: PAYEE INFORMATION

If any additional monies are approved for this reconsideration claim, payment will be made to the payee (referenced below) as designated in the original claim. Please review items 3 through 11 for verification. If any corrections need to be made to the information, please check the boxes that apply and write the correct information in **SECTION C: CORRECTED INFORMATION** below.

1. ☐ **Payee Name is correct as listed below but the address needs to be corrected** - I have submitted the corrected address in Section C of this page.
2. ☐ **Assign payment to a different party other than the one listed below** - I have completed a notarized payment assignment form or recession request from (if applicable) and a W-9 for the payment assignee.
3. ☐ **Payee Name**
(changes to Payee require additional documentation - see 2 above)
4. ☐ **Address**
5. ☐ **Name of Contact Person**
6. ☐ **Daytime Telephone Number**
7. ☐ **Fax Number**
8. ☐ **PC#**
9. ☐ **Claim #**
10. ☐ **Site Name**
11. ☐ **Site Address**

SECTION B: STATEMENT OF COSTS FOR RECONSIDERATION

12. Total costs being contested in this application \$ _____

SECTION C: CORRECTED INFORMATION

Please Note

- The Payee Name and Address on this form will be used for all correspondence, and the Final Agency Decision and check (if applicable) will be sent to this name and address unless a notarized Payment Assignment Form or Rescission Request Form and W-9 for the new designated payment assignee is submitted.
- Any supporting documentation should be submitted with this form.
- You must submit this page *and* the Reconsideration Claim Form Worksheet(s) by the deadline.

Instructions for Completing the
Reconsideration Claim Form

Note: To ensure that this claim form is received at DEQ by the filing deadline, DEQ suggests sending this claim by certified mail (return receipt requested), express service, courier service, or fax (804) 698-4266.

Section A: Payee Information

- Verify the
- (3) Payee Name
 - (4) Address
 - (5) Name of Contact
 - (6) Daytime Telephone Number (of the contact person)
 - (7) Fax Number (of the contact person)
 - (8) PC Number (of the Decision Package you are contesting)
 - (9) Claim Number (of the Decision Package you are contesting)
 - (10) Site Name
 - (11) Site Address

And indicate if this pre-printed information has changed since the original claim was filed by writing the correct information in **Section C: Corrected Information**. Please note that additional documentation is required to change the Payee. For specifics, refer to the front of this form, Section A: Payee Information, #2.

The claimant address is the address to which the Final Agency decision and check (if applicable) will be mailed. If an assignment has been filed, the assignee address is the address to which the Final Agency decision and check (if applicable) will be mailed, with a copy of the Final Agency decision sent to the claimant.

Section B: Statement of Costs for Reconsideration

Indicate the total dollar amount being contested. This dollar amount must agree with the Grand Total on the Reconsideration Claim Form Worksheet. The Reconsideration Claim Form is considered incomplete without the Reconsideration Claim Form Worksheet.

NOTICE OF INTENT TO SEEK RECONSIDERATION

If you have questions about how to complete this form, please call the Virginia Petroleum Storage Tank Fund Customer Service Line at (804) 698-4358. After completing this form, please mail it to: DEQ, OSRR, 10th Floor, 629 E. Main Street, Richmond, VA 23219 or fax it to (804) 698-4338 or (804) 69804266. **DEQ MUST RECEIVE THIS FORM WITHIN 21 DAYS OF THE DATE OF THE CERTIFIED MAIL RECEIPT FOR THE INITIAL REIMBURSEMENT DECISION PACKAGE.**

1. Payee Name
2. Payee Address
3. Name of Contact Person
4. Daytime Telephone Number
5. Fax Number
6. PC Number
7. Claim Number
8. Site Name
9. Site Address

Section I: Method of Reconsideration (please refer to your "Reconsideration Procedures" handout for details)

- A. Please check the appropriate box to indicate whether you wish to seek reconsideration by meeting or by correspondence.

☐ Panel Meeting

☐ Written Determination

- B. Please check the appropriate box to indicate whether or not you wish to participate in a technical reviewer conference (TRC).

☐ I wish to participate in a TRC

☐ I do not wish to participate in a TRC

Section II: Claim File

Please indicate whether you wish to have your claim file copied and mailed to you. DEQ recommends that all claimants seeking reconsideration request and review their claim file.

☐ I do not wish to request a copy of my claim file at this time.

☐ I would like for a copy of the file for the above-referenced claim to be mailed to me at the above stated address. I understand that I will be billed \$0.20 per page for the copies if more than 75 pages must be copied

If you wish your copying bill and/or copies to be mailed to an address other than the address listed above, please indicate the address below:

Alternate address for copies/billing: _____

Instructions for Completing the
Notice of Intent to Seek Reconsideration

Note: To ensure that this claim form is received at DEQ by the filing deadline, DEQ suggests sending this claim by certified mail (return receipt requested), express service, courier service, or fax (804) 698-4266.

Claimant Information

- Verify the
- (1) Payee Name
 - (2) Address
 - (12) Name of Contact
 - (13) Daytime Telephone Number (of the contact person)
 - (14) Fax Number (of the contact person)
 - (15) PC Number (of the Decision Package you are contesting)
 - (16) Claim Number (of the Decision Package you are contesting)
 - (17) Site Name
 - (18) Site Address

If this has changed since the original claim was filed, make corrections on the Reconsideration Claim Form.

Section I: Method of Reconsideration

Check the option corresponding to the method of reconsideration you wish to select, either a Panel Meeting or a Written Determination, with or without a Technical Reviewer Conference (see Reconsideration Procedures for details).

Section II: Claim File

Indicate whether you wish to receive a copy of the claim file. If applicable, provide the alternate address for copies and copy billing. An invoice for copy costs at \$0.20 per page will be included with the file copies if more than 75 pages must be copied. *If the claimant fails to pay the invoice amount, the cost for the copies will be offset against reimbursement due the claimant.*

Only that portion of the file that the claimant does not already have is copied. The documents copied typically include reviewer notes and memoranda/correspondence from the Regional Office.

PC#	
Claim #	
Page	_____ of _____

RECONSIDERATION CLAIM FORM WORKSHEET

Please indicate the PC # and Claim # that you are contesting above. In the space provided below, please indicate (1) the Line Item Number(s) you are contesting, (2) the Task of Material Code, (3) the Phase, (4) the reference numbers pertaining to Relevant Documents you are submitting to support the contested line item (5) the Reason(s) for Reconsideration explaining why the contested cost should be approved, and the Dollar Amount you are claiming.

Line Item Number(s)	Task or Material Code	Phase	Relevant Documents (reference numbers)	Reason(s) for Reconsideration (if you need more space, please attach a separate sheet and reference the line item number)	Dollar Amount Now Claimed
					\$
					\$
					\$
					\$
					\$
					\$
					\$
					\$
					\$
					\$
					\$
					\$
TOTALS				Subtotal for this Page	\$
				Subtotal(s) from duplicate Pages	\$
				Total Cost being contested on the Reconsideration Claim Form	\$